Proceedings in Committee of the Whole

Amendments to Uniform Controlled Substances Act

Monday Morning, July 30, 1973

Mr. Charles W. Joiner of Michigan presiding; Mr. John W. Thomas presenting the Amendments.

CHAIRMAN JOINER: We have before us at this time a short bill to amend the Controlled Substances Act. It's in Tab 13. It contains three sections, two of which amend sections of the existing Act, simply by creating an exception, so as to make effective the new section of the Act, which is Section 4, which adds a section to Article IV. It adds Section 409 to Article IV.

Now, I propose to you that this Act embraces, really, one basic, simple problem which will be explained to you by the Chairman. I'm going to ask him to read the whole of the proposal, because the whole problem is dealt with in Section 409, and then ask him to explain it, and then take up Section 409 for your approval. Mr. Thomas!

MR. THOMAS: Thank you, Mr. Chairman.

Section 1, as Mr. Joiner has just pointed out, adds in Section 401(a) only the underlined language in lines 3 and 4, so that Section 401(a) as amended would read:

(a) Except as authorized by the Act and except as

provided in Section 409, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Section 2 is very much the same. Section 401(c) would be amended by adding the exception for Section 409, so that, as amended, it would read:

(c) Except as provided in Section 409, it is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this Act. Any person who violates this subsection is guilty of a misdemeanor.

Section 409 is a new section that would be added to Article IV, which would read:

SECTION 409. [Possession and Distribution of Marihuana]

(a) Section 401(a) and (c) do not apply to the following acts which, except as provided in subsection (b), are not unlawful:

(1) Possession of---

and the Committee, on the suggestion of the Commissioner

from Louisiana, Mr. Miller, has inserted after the word "of", in brackets, "small amounts of"--close brackets--so that line 6 in 409 would read:

> Possession of [small amounts of] marihuama by an individual for personal use, and
>
> (2) Distribution of small amounts of marihuana by an individual for no remuneration or insignificant remuneration not involving a profit.
>
> (b) Notwithstanding subsection (a), it is unlawful for any individual knowingly or intentionally to:
>
> (1) Possess in public more than one ounce of marihuana; or
>
> (2) Distribute marihuana in public; or
>
> (3) Smoke or otherwise ingest marihuana in public.
>
> A person who violates this subsection is guilty of a misdemeanor and may be fined not more than [ ].
>
> (c) Any amount of marihuana possessed or distributed in public is subject to summary seizure under Section 505(f).

Subsection (d) we have changed, and if you will note the changes, in the first line, strike the entire first line and substitute in lieu thereof: "The use of a con-

veyance".

In line 24 strike the first word, and in line 25 strike the first word, and after the word "subject", the third word in line 25, insert the words "the conveyance". The first word in line 25 should be the word "shall".

So that subsection (d) would read:

> The use of a conveyance to facilitate the acts described in subsection (a) shall not subject the conveyance to forfeiture under Section 505(a) (4).

Before throwing this open for debate on the narrow issue that the Chairman has ordered that we have, I'd like to make a few comments, and then call on our Reporter to give you facts pro and con from the studies that have been made that I think will make it a little clearer to you as to why we are proceeding as we are.

The purpose of this amendment is simply to incorporate in the Controlled Substances Act a crucial recommendation of the National Commission on Marihuana and Drug Abuse.

The Committee is cognizant of the fact that we have about 60 per cent of the 18 to 21 age group--about two-thirds of the college students--that have used marihuana. In 1972 the Marihuana Commission recommended that

the criminal penalties be withdrawn from private possession of marihuana for personal use, but that the criminal penalties be retained for all commercial activities and for all public activities as well. The Commission concluded, as so many other expert bodies, that the social costs of possession offenses far exceed the possible dangers of marihuana use.

The amendment before you has been tightly drawn to decriminalize only a small realm of consumption-related behavior; yet even that small step will free the criminal justice system of some 225,000 teenagers and young adults who do not belong in the criminal process.

I should emphasize: The amendment does not modify any essential purposes of the marihuana prohibition. It tailors the possession offense to preserve the integrity of the legal system. Some 50 years ago the drafters of alcohol prohibition in 43 states made the same decision when they chose not to criminalize the private possession of alcohol for personal use.

Reference could also be made to some of the obscene literature statutes, to amphetamine and barbiturate treatment in the drug abuse and control amendments adopted by Congress in 1966.

To emphasize what this amendment does not do, I'd

like to make two or three points. It does not legalize marihuana. The drug itself remains contraband and subject to summary seizure wherever found.

It does not alter any of the Act's provisions pertaining to commercial distribution of the drug, and in no way can it be said to legalize or encourage the distribution of marihuana.

It does not permit, sanction, or accord legal protection to public activities of any kind--use, distribution, or intoxication.

The Committee recognize that the states' authority to establish and enforce standards of public order and decency is substantially greater than its authority to enforce similar standards in private behavior. It will be apparent to most of you that the proposed amendment reflects a middle-of-the-road position between legalizing the use and possession of marihuana on the one hand and the retention of the status quo on the other.

This approach has been termed "decriminalization" and has won the support of a wide range of authorities and bodies and professional groups. The recommendations of the National Commission on Marihuana, reflected in the amendments before you, have been endorsed by the National Council

of Churches, the National Education Association, the American Academy of Pediatrics, the American Public Health Association, the American Psychiatric Association, the Governing Board of the American Medical Association, the Consumers Union, the Drug Abuse Council, and others.

Decriminalization has also been recommended by sections of the American Bar Association, medical societies in many states, and by the Section on Criminal Law and Individual Rights and Responsibilities of the American Bar, as well as the Young Lawyers Group.

In reporting this amendment to the Conference, the Committee was not unanimous. Some members favored the status quo. Some members favored decriminalizing simple possession of marihuana. That was the majority. One member favored the regulatory approach--licensing marihuana, as we have alcohol, cigarettes, and other things. The proposal before you, the Committee submits, strikes a reasonable balance. It reflects caution and a commitment to the integrity of the legal process, and we think it deserves your support.

Mr. Michael Sonnenreich has been our Reporter to the Committee on the Controlled Substances Act. He is a law graduate cum laude. He has served on both sides of the fence. He was with the Department of Justice as deputy

counsel to the Bureau of Narcotics and Drug Abuse. For the past little over two years he was the Executive Director of the National Commission on Marihuana and Drug Abuse; and I might add that that Commission is one of the few that I know that was funded that terminated its activities after approximately two years' time and turned money back to the government.

Mr. Sonnenreich is now in private practice in Washington with a partner in Boston, so they have offices both places. He is well informed on this subject matter, and I would like to ask your indulgence to have him give you a rundown from a factual standpoint on some of the statistics that I think would be of interest to you. Thank you.

CHAIRMAN JOINER: In the absence of objection, I recognize Mr. Sonnenreich.

MR. SONNENREICH: Thank you.

Rather than belabor this issue, as I am sure everybody in the room has discussed marihuana at one point or another, I do think at this point it is important, before you consider this amendment, that you be aware of the fact that not only has the National Commission issued its report, which was funded by the federal government, but that similar reports have been issued for two years running from the Nation-

al Institute of Mental Health, two reports entitled "Marihuana and Health", which basically track the same facts as the Commission Report.

The main point of dispute with marihuana is not factual any more. With respect to what is known medically about the drug, with what is known from a sociocultural context about how the drug is used in the United States and overseas, there's really no dispute as to the facts at all. Neither the President of the United States, the medical profession, the law profession, the law enforcement profession, really disagree as to the facts. The old saws about marihuana being addicting, the old saws about it causing death, the old argument about marihuana leading to heroin, the arguments about brain damage, mutagenic damage, teratogenic damage, all have been amply shown to be not the case. What has happened is that we have now got longitudinal studies which have been conducted by the National Institute of Mental Health that have run five years. These studies were available at the time of the writing of this report.

The issue really boils down not to a medical decision. If we are going to rate marihuana in terms of medical danger or public health danger, it is going to rate relatively low when compared to all the other drugs that we consider

illicit, and when we compare it to a drug that we do not consider illicit; namely alcohol.

The problem with marihuana is a visceral one, and that is that there have been a lot of myths perpetrated over the years, many of us have been inculcated with these myths, and it's very difficult to dissuade ourselves that these are not, in fact, myths.

The reality of what is happening in the United States is that in most of your large cities of the United States you now have de facto decriminalization of the drug. In most of your large cities the drug is used in wide use; it's even used publicly. Cities such as New York City have a standard policy for law enforcement that they will not make arrests unless complaints are filed. This is true in cities like San Francisco, Los Angeles, Chicago, et cetera.

In the course of the last two years we looked at what actually happens--that is, what is the impact on our criminal justice system. In 1971, using the Uniform Crime Reports of the FBI, we found that out of 415,000 people arrested for drug offenses in the United States 188,000, at least, were for marihuana offenses. Last year out of 495,000 that were arrested, at least 225,000 were for marihuana offenses.

Now, this, by the way, is the third largest category of offenses--of crimes--in the United States. The first is dealing with another drug, called alcohol. The second is petty larceny crimes under $50; and the third are drugs.

Now, we also did a study around the United States in six metropolitan jurisdictions to see what was going on with how cases are disposed of. We found some interesting facts with respect to marihuana; and that is that, by and large, of the cases that are made in marihuana, fully 94 per cent of them are for simple possession, the vast majority of which are for simple possession of under an ounce of marihuana.

We also found out that in the vast majority of these cases--I think it was 89 per cent--these were first offenders. That means that they had not committed any other offense, including moving traffic violations.

Further of this group, it was a very, very age-specific group. The big swing in age was between 17 and 25, with the vast majority around 20 and 21. So what we are dealing with is an age-specific phenomenon.

We also conducted two national surveys. In 1971 we had, in conducting our survey, 24 million Americans, approximately, who admitted to having used marihuana; that is,

using it at least once. Of that group, 8 million admitted to being present users.

In 1972 the figure was at least 26 million Americans admitted to using marihuana at least once, and at least 13 million admitted to being present users.

Now, before everybody gets terribly worried about that, we should point out that "ever a user" means at least once, and the vast majority of people who use marihuana use it only once. 61 per cent of those that were queried said they only used it once, and they stopped using it.

As Jack Thomas pointed out to you, it is an age-specific phenomenon in the 18 to 21 year old age group. In the United States a majority of that age group--55 per cent --have used marihuana at least once. On the college campuses it's 66.9 per cent.

Now, given these facts--and I don't want to belabor you too long with statistics--we are dealing with an age-specific population. We are dealing with a population now that has probably reached its saturation point, in terms of how much of a percentage of your population will use any drug, and we have to deal with this group of people, all of which do not get arrested, the vast majority of which do not get arrested, that have, in fact, violated the law. And the

question that has to be asked is whether or not we can continue the existing system, which is a highly selective kind of enforcement system, which deals with specific people for specific reasons, and whether or not that makes sense in terms of credibility as to the entire criminal justice system, and whether or not it makes sense with respect to the credibility of our other programs of law enforcement with respect to other drugs.

The problem that has been raised--and the President raised it in terms of a major political concern--is that we are accustomed to thinking about marihuana as a narcotic, which it isn't; in associating it with the other drugs--and, quite honestly, when the second and final report of the Commission was handed to the President on March 22 of this year, the President did make a statement again about marihuana, and he did say that he would oppose decriminalizing the use of the drug, the reason being, quite simply, that he felt we had drawn the line, and on one side we had placed alcohol, and on the other side marihuana and the other drugs, and if we were to move marihuana with alcohol in any way, shape, or form, that would open the flood gates for the other drugs.

This may be a political judgment. In terms of a

legal argument, it's somewhat suspect. However, this is a feeling, and there is no question about it: This is what raises the marihuana controversy.

In making this kind of amendment to the Uniform Controlled Substances Act, the Committee was divided, as Jack said. The point was, though, that we felt that something had to be done. We are confronted with a fait accompli. It is not a situation where we are looking prospectively into the future, about something that might happen. We are confronted with the actual facts now. And since we are putting this 225,000 people, at least initially, through our system, we have to deal with that very real problem. If we are to have strict enforcement of the laws, which means fair and equal enforcement of the laws, we can probably not handle it within our criminal justice system.

We have approximately 194,000 people in all our federal, state, and local jails in the United States today. If we were to deal fairly and equitably, just with the people that are coming through every year on drug offenses, we would have a major problem, aside from the fact that it's questionable whether our district attorneys and judges can handle it.

It was for this reason that we were trying to deal not only with the morals of the issue but the realities of

the issue as well.

On the basis of the old argument that not enough is known about the drug, the answer is, quite simply: We know enough about this drug. We probably know more about this drug than about most of the drugs that are presently used in the United States today. We have had both clinical and empirical experience with the drug. Thank you.

CHAIRMAN JOINER: Does anybody care to comment, or make a suggestion or motion?

MR. JENNER: I move the draft as submitted by the Committee.

MR. BURDICK: Mr. Chairman, I'm a little concerned here about the provision in line 20 that "Any amount of marihuana possessed or distributed in public is subject to summary seizure". Is this provision of summary seizure something different than--does this apply only in public? To all of the other controlled substances? What about marihuana that's in the private home? Is this subject to summary seizure if it can be seen from the outside?

MR. THOMAS: Yes, it could.

MR. BURDICK: Well, what's the purpose of this limitation as to its being possessed in public? This seems to imply that you can't seize it if it's in private.

If it's going to remain subject to seizure wherever it is, why not just leave Section 505(f) the way it is? Why have any section here at all on this?

MR. SONNENREICH: It wouldn't be bad to remove the words "in public", but we do have to have the provision there, so that the contraband does apply across the board.

The reason that we had concern about this initially is that you cannot go into the house without a warrant in terms of seizing. Things that are clearly in plain view can be seized. But to make something contraband under 505--(c) makes it contraband when it's found under 505.

MR. BURDICK: Then I would move that we delete the words--or if the Committee will accept it--"in public".

MR. THOMAS: We will accept it.

CHAIRMAN JOINER: There seems to be a division on the Committee. The motion is to delete the words "in public".

MR. BURDICK: Unless the Committee will accept it.

MR. PIRSIG: May I speak briefly?

I'm apparently the radical on this subject, notwithstanding my age. I don't think, if we are going to allow a person to use it in private--private possession even of a small amount of marihuana--that we should authorize the state to seize what he is authorized to use.

Now, I would go farther than that, and say it ought not even to be authorized when it is used in public. This whole section beginning with (b) seems to me to demonstrate a timid approach to this whole subject, and it still reflects an unwillingness to face the facts which have been so ably presented by Mr. Sonnenreich, that this is a harmless substance, has not been demonstrated to be either habit forming or harmful to the person. We're purely emotional about it, as the product of a history which I experienced 30 years ago, when marihuana was presented by one of the federal departments as a terrible drug that would lead to crime, sex abuse, and all the dangers that they could imagine --all of which has proved to be false.

Now, in my opinion, if we are going to be allowing it to be used in private, it makes no sense not to permit it to be used in small amounts for personal use in public as well as in private.

CHAIRMAN JOINER: All right. The issue before the Committee is to strike the words "in public" in line 21.

MR. SPANN: I have a different point.

CHAIRMAN JOINER: Anybody else on that issue only?

MR. JENNER: Mr. Chairman, I rise to oppose this

motion.

In the first place, it's too broad, and it's a hammer-like treatment of the subject. It disregards the use of warrants, and it is not consistent with the philosophy of this particular Act, as explained by Commissioner Pirsig. It's an unfortunate amendment, and I hope that the motion is defeated.

CHAIRMAN JOINER: Are you ready for the question? The motion is to strike the words "in public" in line 21.

MR. EASTHAM: I'm a little concerned about the statement of the members of the Committee that it really doesn't matter whether this is in here or not, as far as the seizure in private of small amounts that are being consumed by the person.

Of course, we don't have 505 in front of us. I had hoped that by decriminalizing the use and possession in your own home, any possibility of condemning and seizing it in your own home would also go out the window. If that isn't the case, maybe we're arguing about something that's kind of a waste of time, if it can be seized anyhow. Whether these words are in here or not in here, what difference does it make? I'd like clarification.

CHAIRMAN JOINER: May I ask, is marihuana a

Schedule I substance?

MR. SONNENREICH: Yes.

CHAIRMAN JOINER: Well, 505(f) reads as follows:

Controlled Substances listed in Schedule I---

and this includes marihuana, I'm told.

...that are possessed, transformed, sold, or offered for sale in violation of this Act are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I which are seized or come into the possession of the state the owner of which is unknown are contraband---

MR. NEEDHAM: [Interposing] Go back there to where it says "in violation of this Act".

CHAIRMAN JOINER: "Controlled substances listed in Schedule I that are possessed, transformed, sold, or offered for sale in violation of this Act are contraband and shall be seized and summarily forfeited to the state."

MR. NEEDHAM: So I would read that that when you decriminalize the first section of 409, it's not seizable in the premises under 505, and that, the way the section is reworked now, without the amendment, the home possession of marihuana for private use would not be subject to seizure, and I therefore would oppose the proposed amendment, and

wish that the words "in public" remain in the Act.

CHAIRMAN JOINER: It seems to me that's the proper interpretation, and the Committee agrees with that interpretation.

MR. BURDICK: Mr. Chairman, I'll withdraw my motion, but I understood that the position of the Committee was --and I thought I heard the Chairman say--that the possession of any amount of marihuana would still remain subject to seizure.

CHAIRMAN JOINER: I think maybe the Chairman stands corrected at this time. [Laughter]

MR. BURDICK: Then I withdraw my motion.

CHAIRMAN JOINER: All right, fine. Anybody else?

MR. SPANN: I want to propose an amendment to add one word to Section 409(a) (2). It reads: "Distribution of small amounts of marihuana", et cetera. I would propose to add the word "casually" at the beginning.

CHAIRMAN JOINER: Where does that go, Commissioner Spann? Line 8?

MR. SPANN: Section 409(a) (2).

CHAIRMAN JOINER: "Casual distribution"--is that correct?

MR. SPANN: Yes. This invites promotion of mari-

huana by the regular distribution, but not for profit, and I can see that this would be done.

CHAIRMAN JOINER: How does the Committee react?

MR. THOMAS: I don't think it's necessary, in that you have got the words "for no remuneration or insignificant remuneration not involving a profit", which are the meaningful words to us in that subsection.

MR. SPANN: You understand that there are many commodities that may be distributed entirely without any profit, with the idea that if they catch on there will be later profit, and this will encourage the use of regular distribution. Whiskey is frequently given away where it can't be sold, for the same purpose.

MR. MILLER [La.]: Mr. Chairman, I have the recollection that both the Young Lawyers Section recommendation, as well as the Section of Criminal Law, used the word "casual". I think the word "casual" has been accepted by all the groups that have fought for this particular change.

CHAIRMAN JOINER: All right, I'm told by the Committee that they will insert the word "casual", unless there is objection from some other member of the house. Hearing none, the word "casual" is inserted in line 8, immediately prior to the word "distribution", and "distribution" is de-

capitalized.

MR. PACKEL: I'm troubled by line 11 on page 2, where we are continuing it as a crime: "possess in public more than one ounce of marihuana". If a man is carrying a package in which there is concealed two ounces of marihuana, it seems to me that that ought not to be a crime. I would move that we add after the word "public" in line 13 the word "view", so it's only if he is possessing this marihuana in public view that there ought to be the crime.

It seems to me that carrying for your own convenience, when you are going from your home to someone else's home, an amount larger than one ounce ought not to be a crime.

CHAIRMAN JOINER: All right, the motion to change line 13 to add the word "view" after the word "public", so that line 13 reads: "Possess in public view more than one ounce of marihuana".

Anyone want to speak to that issue?

MR. MILLER [La.]: I speak against it, Mr. Chairman. The limitation to a small amount--and here it is defined--is considered essential not only from the standpoint of attempting to get the Act through various legislatures; but from a practical standpoint, if you eliminate the limita-

tion, then a person can be carrying ten tons of it, as long as it was not in view.

CHAIRMAN JOINER: Anybody else?

MR. NEEDHAM: I find it difficult to see, if you are going to enact in 409(a) (1) the verbiage suggested, "Possession of marihuana by an individual for personal use" --now we have the brackets in there, which is suggestive, and not controlling.

If I am possessed of marihuana for my own individual use, and I have two or three ounces of it for my own individual use, how in heaven's name can it then become illegal under (b) when we have already made the possession of it legal under (a)?

CHAIRMAN JOINER: Because, I suppose, it's specifically made so under (b). There is an exception made to that, and this is the way of defining an amount.

MR. NEEDHAM: But, in other words, you read the possession in a public place of more than one ounce of marihuana--someone possessed not for his individual use?

CHAIRMAN JOINER: That's the way I would read it, yes.

MR. NEEDHAM: Thank you.

CHAIRMAN JOINER: Anybody else on this issue?

MR. MILLIMET: Mr. Chairman, I think it might be useful to know, as Mr. Sonnenreich has just confirmed to me, that one ounce is enough to make 15 to 20 cigarettes, so it's not as small an amount as you might think.

MR. DAY: I would like to propose substitute language for this proposed amendment to accomplish, I think, the purpose of the proposal. I would suggest--and move--that the word "openly" be inserted before the word "possess", so that it would read "Openly possess in public", because I think otherwise you may get to the situation where it is contained in your house.

CHAIRMAN JOINER: All right, I'll take that motion, but I don't think it's a substitute.

MR. DAY: I think the mover accepts that.

MR. PACKEL: I do.

MR. DAY: And I would wonder also if the motion shouldn't include in line 20 under (c) inserting the word "openly" before "possessed".

CHAIRMAN JOINER: Well, let's take them up on the first issue alone, so we don't have a division on this. The issue now is to insert the word "Openly" before the word "possess" in line 13--"Openly possess in public more than one ounce of marihuana".

MR. EASTHAM: Mr. Chairman, until the time comes when we decide to take marihuana out from the controlled substances and make it like alcohol, with certain licensing, and so forth, as long as you have imposed on the law enforcement agency an obligation to prosecute the pusher, the person who is selling it for a profit, you are going to strip that enforcer of one of his primary weapons, which is to find someone with more than an ounce on him, and get him for the possession. And if you change that section (1) here by putting in "openly", or any of these other modifying words, you have injured the law enforcement people.

Now, I personally would just as soon see the whole thing become like alcohol, but, I think, if we are not willing to do that--which apparently we are not, by these amendments--then you shouldn't strip the law enforcement people of their weapon, and I think possession of more than an ounce has to continue to be a crime, if you are going to get the pusher.

CHAIRMAN JOINER: Anybody else want to speak on this point?

MR. BLEWETT: I don't have the Act before me either, but is "public" for the purpose of this amendment defined in that Act anywhere, so that we know what we are voting on?

What is a public gathering? Is it ten, twenty, or one hundred --or three--or what?

MR. THOMAS: Anything other than private, in the interpretation of the Committee.

MR. BLEWETT: Is "private" defined in this Act?

MR. THOMAS: I think "private" would relate to your home. Under your common law theory, public highways would be public. In your automobile on the public highway, we consider, would be public.

MR. BLEWETT: Even though the public is invited to participate? Is that the Committee's interpretation?

MR. THOMAS: I think that would be true.

MR. EAGLES: Mr. Chairman, would your definition of "public" encompass--or "private", depending on your point of view--encompass the situation where there is a Watkins Glen situation, and there are tickets sold, but it's not open to anyone who doesn't have a ticket?

MR. THOMAS: That would be public, as I see it.

MR. BURDICK: Could we go to the Uniform Public Assembly Act, and take the definition of a public place there, and use the term "public place"? There is a very good definition of what constitutes a public place, which includes not only publicly owned places, but privately owned places

that are open to the public?

CHAIRMAN JOINER: Anybody want to respond to that?

MR. PIRSIG: Mr. Chairman, I'd like to raise a question. Would the 600,000 people attending the rock festival to which tickets were required be a public or a private -- ?

MR. THOMAS: Public.

CHAIRMAN JOINER: The response up here has been: It would be public.

MR. MILLER [La.]: Well, I'm reverting to the drastic results which would ensue if you eliminate any sanction against the transportation in public of unlimited amounts of marihuana. Those who may be concerned about a construction of "public", including if the shade of their window at home isn't completely closed--if that really disturbs you, take care of it in some other fashion, but don't open it up to eliminating any sanction against the transportation on a public street of ten tons of marihuana, merely because it's covered up and is not visible.

CHAIRMAN JOINER: You are speaking aginst the motion, then? The motion is to insert the word "openly" in front of the word "possessed".

MR. SULLIVAN [Minn.]: Would raising it from an

ounce to two ounces eliminate some of the problem? You can carry a certain amount for your private use, but there may be concern whether an ounce is enough. But if you can get up to two ounces, which is apparently the equivalent of a couple of packs, isn't that enough to take care of most needs? [Laughter]

MR. SONNENREICH: Well, on the first point, on the issue of the "only", the reason why we were talking about "in public" rather than "in public view" is the reality of the situation. "Public view" is not going to be in your pocket, or in some other situation where you are concealing it, which would, in effect, eliminate section (b), other than if the person was actively smoking it or hanging marihuana around his neck, which is highly unlikely.

So the reason we talked in terms of "public"--it doesn't matter whether it is in open view or not, as a condition.

If you buy subsection (b), the point with respect to what constitutes a public place, as opposed to a private place--we have already gone through this with the Uniform Controlled Substances Act when we were discussing that initially, and also with the Federal Act, in terms of what constitutes private and public, since they do dovetail. We

are normally talking about--"public" does not involve a situation where you exercise a proprietary or possessory right in a place. The examples of that were your home, or if you have a hotel room where you are exercising control.

But if you are opening it up to the public in any way, other than friends--when you are holding it out in a place such as Watkins Glen, that is clearly public. That was the intent of the Act, and we assume that it would continue here.

MR. RUDOLPH: I'm speaking for the motion. I don't think the problem of ten tons is a real issue, because section (b) doesn't come into effect unless (a) is in effect in the first place, and in 409(a) the possession has to be by an individual for personal use, in this situation; and then as an exception to the exception, if he uses it in public, the exception no longer applies.

So the ten tons, unless he could say that the ten tons were for his personal use in small amounts--it wouldn't affect that kind of situation, because he wouldn't come under the exception in (a).

MR. BUERGER: There is a very good definition of "public place" in some other Act, Commissioner Burdick suggested, but he did not read it. Before we vote on this I'd

like to know whether there are any alternatives available.

CHAIRMAN JOINER: I don't have a definition. I can't help you. I'm sorry.

MR. BUERGER: Commissioner Burdick, you referred to some other Act. Do you have that definition?

MR. BURDICK: I don't have it right here, but I think I can get it. But I'll say that it tracks what Mr. Sonnenreich defines as the meaning of the term "public".

MR. MILLER [La]: I have it, if you care to hear it, but I understood the Reporter to say that the Act itself --the basic Act--had a definition.

CHAIRMAN JOINER: No, the basic Act does not have any definition in it of the word "public".

MR. McKUSICK: Mr. Chairman, I would suggest that these are two separate questions; you can have possession openly or not openly, whether or not it's in a public place. They are different issues.

CHAIRMAN JOINER: All right, if you don't want to wait for the definition to be read, are you ready to vote on the issue of the word "openly" before the word "possess"?

MR. THOMAS: The Committee is certainly opposed to adding the word "openly". We think it would jeopardize the enforcement of any public use or possession of marihuana.

We think that it's too easily concealed. We don't think it would ever be in open view, except by the flagrant kid that didn't care or wanted to be picked up.

We think that would just destroy the intent of what we have in (b). If that's what you want---

CHAIRMAN JOINER: All right, all those in favor of inserting the word "openly" before the word "possess" in line 13 say "aye"; all those opposed say "nay". The motion is lost.

Anybody else?

MR. BURDICK: Mr. Chairman, I would like to address myself to the quantity proposition. I appreciate Commissioner Keddie's concern--I believe it was Commissioner Keddie--for the law enforcement officers, and at the same time I understand that marihuana is sold generally in what they call a lid, which is an ounce, and if a person may have a cigarette or two on his person, and then he purchases the ounce, he will be violating the Act, when we really don't intend to catch him for that, so long as it's less than two ounces.

So I would say: If the quantity is less than two ounces, it would be decriminalized here.

CHAIRMAN JOINER: I take this as a motion to change the word "one" to the word "two" in line 13.

MR. BURDICK: To "less than two".

CHAIRMAN JOINER: To "less than two" in line 13.

MR. BURDICK: Because if it's two, he can still be a pusher, but he's not likely to be a pusher if he has only one complete ounce.

CHAIRMAN JOINER: "...not more than two"; is that good enough?

MR. BURDICK: It would be less than two.

CHAIRMAN JOINER: Less than two ounces.

MR. BURDICK: Less than two ounces.

[Calls of "No! No!"]

MR. NEEDHAM: The sentence would mean that it's unlawful to possess less than two ounces of marihuana.

MR. LANGROCK: "...two ounces or more".

MR. NEEDHAM: That means that if you possess half an ounce, it's illegal.

MR. BURDICK: It should be "two or more ounces".

MR. BUERGER: If I had no marihuana in my possession, I'm afraid I would be guilty of violating this Act.

CHAIRMAN JOINER: Do I understand the motion, Commissioner Burdick, that in line 13 the words "more than one ounce" are changed to "two or more ounces"?

MR. BURDICK: "...two or more ounces"--yes, that's

correct.

CHAIRMAN JOINER: Anybody want to say anything on that issue?

MR. THOMAS: Speaking for myself and the Committee, we think that if we add the "two", we are opening the door and getting away from what we are driving at, which is a man in possession of one ounce. When you are getting into two ounces, you are getting into something more than one generally has for his use.

MR. BURDICK: Except that in purchasing, Mr. Chairman---

MR. THOMAS: [Continuing] This is not directed at the pusher. This is directed at the possessor.

MR. BURDICK: You have to buy it by the lid, and if you have got two spare cigarettes in your pocket, you can't buy the ounce.

MR. THOMAS: You'd better hand them to somebody else. Several of the states too have one ounce in their presently existing statutes. We thought it would be more salable by limiting the amount to one ounce than by raising it to two or more.

MR. BURDICK: I'll press my motion to make it read "two or more ounces".

MR. FORD: I just would say that that gentleman is in exactly the same shape that a lot of us are under the liquor laws. If you can't buy more than a gallon, well, you are just careful not to have an extra bottle in your car when you go buy the gallon. He's going to have to be careful too.

CHAIRMAN JOINER: Are you ready for the question? The question is to change the words "more than one ounce" in line 13 to "two or more ounces".

[The motion was put to a voice vote and was lost.]

CHAIRMAN JOINER: Any other motions?

MR. TORVINEN: Mr. Chairman, I'm not an expert in criminal law. However, it appears to me that the use of the words "small amount" has a very serious problem of being unconstitutionally vague.

CHAIRMAN JOINER: We are dealing with line 6 now, is that correct?

MR. TORVINEN: Page 1, lines 6 and 8. The use of "one ounce" on page 2, line 13, does not modify, in my view, section (a) of Section 409 on page 1. The "small amount" stands on its own, and whether or not the law would read that it's unlawful to possess marihuana--paraphrasing it--it's unlawful to possess marihuana unless you possess a small amount--and I think that that's open to all kinds of

conjecture, and courts have taken the attitude that in laws of a criminal nature--which this is in my State, anyway. It's a crime to do it.

CHAIRMAN JOINER: Well, since the word came in here as a result of suggestions from Commissioner Miller--at least, in line 6--let's have a reason why that came in here.

MR. MILLER: I'm not an expert on criminal law either, although I'm an officer in the Council of the Criminal Law Section.

The words "small amount" were deliberately used by the Council of the Section of Criminal Law, which is composed of both prosecutors and defenders. It's purposefully vague. And I might add that the Section of Individual Rights likewise have used the words "small amount", as have the Young Lawyers Section.

I think the purpose of it is to give the judge some flexibility in the handling of individual cases. But in any event, the words "small amount" were deliberately used by those who have advocated this relaxation.

MR. TORVINEN: I would think that the end result of the use "small amount" is going to void the whole matter of criminal possession of marihuana, because the courts are

going to find that it's too vague for a person to know whether or not he's committed a crime. In one state one ounce may not be criminal to possess, or before one judge it may not be criminal to, if he has one ounce, and with another judge it's half a pound, because a "small amount" is an absolutely relative term. It's a small amount compared to a ton, even if it's half a pound.

I would move that in line 6 and in line 8 we insert "one ounce".

CHAIRMAN JOINER: Insert the amount?

MR. TORVINEN: Insert "one ounce" in place of "small amount".

CHAIRMAN JOINER: All right, the motion is to change it to read "one ounce" instead of "small amount". Anybody want to speak to that?

MR. MILLER: May I speak to that a moment? I would personally like that, but I'm telling you, you are going to jeopardize the support of the Young Lawyers and the Individual Rights Section, if you pin it down that narrow.

MR. GIBSON [Vt.]: I was going to raise the same question, because I don't see how the language "small amount" really gives anybody any notice at all as to whether they have committed a crime or not, and I would think that

you would have to put in an ounce figure, whether it's one ounce or whatever amount the Committee thought desirable.

MR. JENNER: Mr. Chairman, I rise to oppose the motion.

As all of you know, we are having some troubles with the American Bar Association and the House of Delegates. I'm Chairman-Elect of the Individual Rights and Responsibilities Section, and some time in August when the ABA concludes its term, I will be Chairman of that Section.

You have the Young Lawyers Section, the Section on Individual Rights and Responsibilities, and the Section on Criminal Law of the American Bar Association deliberately and very carefully using the words "small amounts of", and this Conference will then turn to the presentation to the American Bar Association House of Delegates of words that are at direct odds with the deliberate wording of at least three Sections of the American Bar Association.

I do not share the opinion of the distinguished Commissioner from Nevada that these words are unconstitutionally vague, and I hope the motion is defeated.

MR. COAKLEY: I have had a number of years' experience in the prosecution of crime, and I believe that the Commissioner of Nevada is correct that the words "small

amount" are so vague as to be unconstitutional and unenforceable.

MR. NEEDHAM: Mr. Chairman, I would go along with these people if the possession of the small amount of marihuana was what was being defined as a crime, but the possession of marihuana is a crime unless it is in small amounts, and I rise to oppose the "one ounce".

CHAIRMAN JOINER: You oppose the motion?

MR. KRONISCH: Mr. Chairman, I also oppose it. I think, if we read the language "small amount" in the context of the idea that an individual may possess an ounce, and we see that apparently it is permitted to give away a cigarette or two--and "small amount" is a very good way of describing that.

MR. WITHERSPOON: Mr. Chairman, I am against this "small amount", and think we ought to have "one ounce", because it just means that if the mayor's son is caught with two pounds, they will say that's okay, but if some of the less prominent people are there, they will say that's not a small amount, and you are hooked.

Now, with regard to the Individual Rights and Responsibilities and the Young Lawyers Section of the ABA, they are not the most popular or the most influential Sections of

the American Bar, and they don't have too much weight. [Laughter]

MR. BUGGE: A point of inquiry on this issue--and I guess I'm directing it to the Committee, or to the Reporter.

Does the "small amount" language, or the undefined language--the possession language in the section under discussion--cover the person who grows his own in his backyard? I mean, possession of the plant.

CHAIRMAN JOINER: I am told by the Reporter that it does not. Does this satisfy you?

MR. BUGGE: I fail to see why possession of a marihuana plant--is that a small amount, or could it be?

MR. SONNENREICH: Cultivation under the Uniform Act--we went through this last time. Cultivation is treated as a separable offense, so that that comes within production. And if you started to break down what kind of production or cultivation is permissible, it wouldn't work.

There was one other point, if I could comment, just since I'm up here. In the Federal Act we put in "small amounts for no remuneration" when we were talking about distribution, and the reason for that is that you have something to play against it. You have possession with intent

to sell, which is a felony under the Federal Act. The burden is on the prosecutor, when you are talking about distribution, to prove that there is possession with intent to sell, which means that it is something more than a small amount. When you use the words "small amount for personal use", the key words in line 6 are "personal use". And when you put in the "small amounts", you may raise a constitutional issue.

MR. RICHARDSON: I wonder if the gentleman who just spoke, or perhaps someone else, could tell us if they know how many marihuana cigarettes can be made from one ounce.

MR. MILLIMET: About twenty.

CHAIRMAN JOINER: Twenty to twenty-five.

MR. SONNENREICH: It depends on how you roll them. [Laughter]

CHAIRMAN JOINER: We are on the issue of insertion of the words "one ounce" in lieu of "small amount".

MR. BURDICK: There's another way to handle this, and that's to forget about the small amounts and talk only about amounts for personal use, and then create a presumption that if you possess less than a certain amount, you are presumed not to possess it for resale, or whatever else; in other words, that you are presumed to possess it for personal use, if the amount you possess is less than a certain

amount.

But I think you can avoid the constitutional question that way, as to whether your term is too indefinite.

CHAIRMAN JOINER: All right.

MR. BURDICK: I'd just like to ask you to consider that. But if you have to specify a particular amount, I would certainly urge that it be less than two ounces.

CHAIRMAN JOINER: So the issue is still the original issue of insertion of---

MR. BURDICK: "...two unces" instead of "small amount".

MR. EASTHAM: On line 6 we created a straw man, and now we're in the process of knocking it down. The bracketed language should never have been put in in the first place.

CHAIRMAN JOINER: I will accept that later on.

MR. EASTHAM: I'm just throwing this out. I'm going to urge the defeat of the motion.

CHAIRMAN JOINER: I'm ready to put the motion, if you---

MR. EASTHAM: On line 8 we're using, simply, the same language as the Federal Act, which creates the same crime, and I don't see that that's a problem, so I urge the

defeat of the motion.

MR. STACKABLE: During my first year here I asked the question: What exactly are we supposed to be doing? And the answer was: To create some sort of uniformity.

Well, when you use "small amount", it seems to me what you are saying is what the Supreme Court said when they were dealing with pornography, which is not going to lead to a uniform amount of pornography in this country. [Laughter]

But, nevertheless, I oppose the terminology of "small amount". I think we have got to nail it down, make it uniform. If a person says, "I drink very little alcohol --a small amount of alcohol"--well, that means one thing to one person and another thing to another person, and I oppose the "small amount" concept.

CHAIRMAN JOINER: The Committee has told me they are opposed to this change. Do you care to say anything else before I put the vote? [Calls for the question]

The issue is whether to substitute the words "one ounce" for "small amount" in lines 6 and 8.

[The motion was put to a voice vote.]

CHAIRMAN JOINER: The nays seem to have it; the nays have it. Any other issues or matters to be raised?

MR. PIRSIG: Mr. Chairman, I just want to make an

observation on the record. I'm probably alone in this position, but I think I want it at least to appear in the record that there is one Commissioner who takes this view.

What we have done, if we adopt this Act, is to authorize for personal use possession of small amounts of marihuana. Then we have created a situation where to provide that person with small amounts of marihuana is a crime, and you are going to create a bootleg situation of unprecedented proportions, far beyond anything we saw during the Prohibition era, because now you make the recipient of it legal, but you make it a crime to give it to him. And I just think that doesn't make sense at all.

MR. WALKER: Mr. Chairman, I understood the Reporter to say that this problem of unconstitutional vagueness would arise only if a state adopted the bracketed words in line 6 "small amounts of". I think that the proper procedure for this Conference would be to delete those bracketed words, so that a state could not fall into that trap, and I so move.

CHAIRMAN JOINER: I accept that motion. The motion is to delete the bracketed words and the brackets in line 6. Anybody want to speak to that issue?

MR. MILLER [La.]: I want to oppose it. I think

it's extremely helpful as a guide to a state, and may enable greater acceptance of the Act.

Those words, whatever their import is, are going to appear in the Act. They are going to have to be considered and judged by the authorities, and I think it helps acceptance of the Act to at least put it in brackets. My suggestion was to put it in the text without any brackets; but at least it ought to be in brackets.

MR. THOMAS: With all due deference to Commissioner Miller from Louisiana, we bought his language, and bracketed it, with great misgivings. We think the Act would be considerably improved by removal of the bracketed words in line 6, and we would support the motion to delete the bracketed words.

CHAIRMAN JOINER: Anybody else on this issue? I'm ready to put the question. The question is as to the removal of the words "small amounts" and the brackets in line 6.

MR. TORVINEN: Mr. Chairman, we had some words from the person at the head table there--I'm sorry, I can't recall the name--concerning the background of the history of the knowledge of marihuana. He said that we had no more argument about the facts concerning marihuana. One of those

facts, as I understand it, is that the active ingredient of marihuana, tetrahydrocannabinol, is a hallucinogenic drug, and in concentrated quantities or high enough doses it has the same, or very similar effects to LSD or some of the other hallucinogenic drugs, and if you take a large amount of marihuana and distill it--if that's the proper word--the first step is making hashish out of it.

In other words, distilling it, you come to a type of drug that is more dangerous than marihuana.

Now, if you are talking about personal use, maybe you take a ton of marihuana and make a few ounces of a very strong drug out of it. That is what we are opening the door to. If my facts are correct, I would be strongly opposed to that.

CHAIRMAN JOINER: Mr. Sonnenreich?

MR. SONNENREICH: Yes. We're talking about marihuana, which is defined. The THC--the tetrahydrocannabinol--which is a synthetic, is not included, nor would this provision apply to any synthetics. So THC would not be under this definition.

MR. TORVINEN: I was talking about a concentration, which has the same effect.

MR. SONNENREICH: The concentrations of natural

plant products can vary, in terms of--you can have very strobg marihuana and very weak hashish, and vice versa. On the concentrations that the lines have been drawn, both in the situation of the Psychotropic Convention of Vienna, which was in part agreed to, is--we defined between synthetics and natural plant products; and that's the way the World Health Organization has done it, and the Federal Government.

CHAIRMAN JOINER: Anybody else on this issue alone?

MR. MILLER [La.]: Yes. At the last convention of the ABA, there was an effort made at that time to decriminalize the mere possession of marihuana. The action of the House of Delegates on a motion made by Whitney North Seymour, President of the American Bar Association, resulted in the exact reverse of the decriminalization. By a substitute motion, or an amended motion, the House changed the resolution to recriminalization, to one which merely caused reduction of excessive penalties for mere possession of marihuana.

The significant point of that day is illustrated by the fact that another amendment was offered which was adopted by the House overwhelmingly, and that was that this House of Delegates of the American Bar Association deplores the use of marihuana.

Now, this Act is, in a certain sense, moving in a direction that may ultimately completely reverse this feeling of opposition--strong feeling of opposition--to the use of marihuana.

Now, the deletion of the words "small amounts", which, after all, is only in brackets, is still going to have an adverse reaction among those who hesitate to even go this far, permitting small amounts, and as the Commissioner from Nevada spoke of, if it's possible so to concentrate marihuana into becoming a dangerous drug by compressing the quantity of it, law enforcement officers would have to stand idly by until that man possessing umpteen pounds of marihuana--would have to stand idly by until he had, in fact, compressed it into a more dangerous drug.

CHAIRMAN JOINER: Do you want the floor on this issue?

MR. WALKER: I just would like to say that it makes no sense for me for us, as a matter of packaging or advertising, to promulgate an Act which contains in it an admitted trap as to constitutionality just for the purpose of hoping that we can sell it to the ABA.

CHAIRMAN JOINER: So that you are suggesting that the words be eliminated?

All right, I'm going to put the vote, then, if you are ready. All those of favor of eliminating the bracketed words and the brackets in line 6--the words "small amounts of"--say "aye"; all those opposed say "nay".

The motion is carried.

MR. BURDICK: Mr. Chairman, I think the guidance that we need here will still come from that presumption I was talking about, so I would like to suggest to the Committee--and if they will not accept it, I will make it in the form of a motion--that possession of not more than one ounce of marihuana is presumed to be for personal use. And this will give the courts some guidance as to what amounts we are talking about. The prosecuting attorney can also prove that even possession of a tenth of an ounce is for professionalism, and still it will protect the individual by giving him a presumption that if he has not more than one ounce, he's home clear.

CHAIRMAN JOINER: All right, Commissioner Burdick has moved that we add some words some place in here that would be substantially as follows: "Possession of not more than one ounce of marihuana is presumed to be for personal use".

Anybody want to speak to that?

MR. THOMAS: The Committee has no objection to that.

CHAIRMAN JOINER: All right, it will be added, then. "Possession of not more than one ounce of marihuana is presumed to be for personal use." Is "personal use" a term that's been used in here before?

MR. SONNENREICH: Yes.

MR. BURDICK: You probably still need the words "by an individual". I'm not sure, but I think you probably need that.

CHAIRMAN JOINER: Those words are added in there, and it will appear in the final draft.

MR. CORNELL: Mr. Chairman, I echo the concern of Mr. Pirsig about the fact that we can possess and smoke marihuana, but no one can legally cultivate it, and no one can legally sell it to us. I think there is an inherent hypocrisy in there, and while the Reporter is still here I'd like to know whether there has been any consideration of the other, also hypocritical compromise solution of creating an infraction, or a misdemeanor, of the use and possession of small amounts of marihuana, as opposed to what amounts to decriminalizing one part of it, while making it illegal for the person who sells it to you.

CHAIRMAN JOINER: Do you want to answer that?

MR. SONNENREICH: This is the argument that is ofttimes raised. From a historical point of view, in terms of making something not a crime to possess or use, and making something a crime to sell--fortunately, we have a great historical precedent for this, both in terms of alcohol prohibition under the Volstead Act and the Drug Abuse Control Act of 1965, and also in other ways that the Court has dealt with things which--for example, the Stanley v. Georgia kind of situation, where it is legal to possess and use in your own home obscene materials, but not to sell them.

The thing that I think bothers people about this is that the assumption is that you are actively supporting the use of a drug. Both the Commission report, the AMA, the ABA statements--all are basically in agreement with what the Committee has said here. We are in favor of discouraging the use of the drug. We are not telling people to use it. But the fact that you remove the penalty for the use in private of this drug does not necessarily mean that you are condoning it.

So the argument that this is suddenly going to create a black market--you've got it now. That isn't the problem. If this law was passed in every state of the Union

today,you say: Well, how are the people going to get this thing? Well, the same way they do every day. They go to the main street in Hyannis Port. You can buy roach holders in 20 different stores there right now. The point is, it's there, and you don't have to build a black market operation, simply because the black market operation has been there.

Another point from the law enforcement point of view that I think you have to keep in mind: When you deal in this, you are not dealing in a heroin situation. You are dealing in not an organized criminal activity, the way you have normally been associated with heroin. For those that don't know, we have 5.1 million acres of marihuana growing wild in the United States. The State of Kansas holds the honor of 76,000 acres of it growing wild. [Laughter]

So I don't think that you have got to worry in terms of what you would create by this kind of situation. We do have historical precedent for it.

CHAIRMAN JOINER: I wonder if we are ready to rise now.

MR. EAGLES: Mr. Chairman, I have only one remaining concern. I'm not conversant with the body of law that's built up around some of these terms, but in my State I believe that the terminology on lines 9 and 10, "insig-

nificant remuneration", might raise some constitutional vagueness problems.

CHAIRMAN JOINER: Has the Committee thought about that?

MR. THOMAS: That is in the present federal law. It, so far, has not created any problems.

MR. BUGGE: Mr. Chairman, may I put a question to the Reporter, or to the Committee?

The statistics cited at the beginning of this discussion, of 225,000 arrests for possession and/or use of marihuana presumably all occurred from public use of marihuana, which is still a crime under the bill as it is in its present form. How much, if at all, will this Act reduce clogging of the courts?

MR. SONNENREICH: That is not necessarily true. Many of the possession offenses were pot parties being held in people's homes, so what happens in most instances is: Most of the arrests are spontaneous, in the sense that the police aren't actively looking for it, which lends credence to the de facto situation; but that does not necessarily mean that they are all in public.

MR. THOMAS: Mr. Chairman, I move that the Committee of the Whole rise, report that it has had under con-

sideration the Amendments to the Uniform Controlled Substances Act, has considered them section by section, has made certain changes and amendments, and recommends that the Amendments to the Act be approved and presented to the Conference for a vote by states for final adoption.

MR. COAKLEY: Mr. Chairman, as a dissenting member of the Committee, I'm not going to make a motion. I simply want to make a comment.

If the Conference as a whole wants to adopt this Act on the basis of reducing the number of arrests and reducing congestion in the courts, that's their business. That is a problem.

But I do take issue with the absolute, unqualified clean bill of health for marihuana which was given by Mr. Sonnenreich when he said that there is no dispute as to marihuana any more, because there is a dispute. There is a considerable body of respectable thought that the use of marihuana is dangerous to the individual users and to society. And furthermore, the mere fact that you are voting now on making more than a small amount of marihuana criminal is inconsistent with that thesis.

CHAIRMAN JOINER: Are you ready for the vote?

MR. BUERGER: I request that the vote be by states.

CHAIRMAN JOINER: Well, you will get a chance to vote by states when this finally comes up. Do you want a vote by states now?

MR. BUERGER: On the question of whether the Act should be approved, yes.

MR. JENNER: Will Mr. Buerger please take the mike, so we can hear him?

MR. BUERGER: My apologies, Mr. Chairman.

I request that the vote on the question before the house be by states.

CHAIRMAN JOINER: Could I just ask you, Mr. Buerger: If the motion is carried, there will be a vote by states on the same issue, as to whether to adopt. Isn't that satisfactory?

MR. BUERGER: No. I think that before we even permit that question, we should get some idea whether or not there would be an approval of it.

MR. BURDICK: As I understand it, a number of Commissioners are concerned with the posture of the second Act, the Drug Dependence Treatment and Rehabilitation Act. They feel that this determination should be made now, in order to have guidance for the consideration of the following Act, and the Commissioner is within his rights to demand a

vote by states.

The Secretary will come forward and conduct the roll call by states.

CHAIRMAN JOINER: Ladies and gentlemen, the issue before you at this time on this roll call vote by states is whether or not the Committee of the Whole will rise and report that it has had under consideration the Amendments to the Uniform Controlled Substances Act, that it has considered them section by section, has made certain changes and amendments, and recommends that the Act, as amended be approved and presented to the Conference for a vote by states for final adoption.

That's the issue on which you are voting at this time. If you vote "yes", we rise and recommend that we adopt the Act. If you vote "no", you recommend that we continue in Committee of the Whole--period.

MR. KEELY: All right, if you are ready to vote, as I call the roll will you please answer "yes" or "no" or "pass" clearly, particularly so we distinguish between "yes" or "pass".

[Whereupon the roll of the states was called, with the following results:]

Ayes: Alabama, Alaska, Arizona, Arkansas, Connec-

ticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, Wyoming.

Noes: California, Colorado, Delaware, Hawaii, Kansas, Louisiana, Maryland, Mississippi, Montana, Nevada, New York, North Dakota, Oklahoma, Utah, West Virginia.

CHAIRMAN JOINER: The motion is carried. I can tell you that, although they haven't added up the exact number.

MR. KEELY: Thirty-three to 15.

CHAIRMAN JOINER: I so report, Mr. President.
